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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON
PORTLAND DIVISION

PATRICK AND HEATHER HADA,

Case No. **3:-11-cv-1150-MO**

Plaintiffs,

**DEFENDANTS GMAC MORTGAGE
LLC'S AND MERS' ANSWER &
AFFIRMATIVE DEFENSES**

v.

**GMAC MORTGAGE, LLC, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., and NORTHWEST
TRUSTEE SERVICES, INC.,**

Defendants.

For their Answer to plaintiffs' Complaint, defendants GMAC Mortgage, LLC ("GMACM") and Mortgage Electronic Registration Systems, Inc. ("MERS") admit, deny and allege as follows:

1.

GMACM admits paragraphs 1 and 2 of plaintiffs' Complaint.

2.

GMACM admits it does business in the state of Oregon. MERS admits that it was the beneficiary of plaintiffs' deed of trust, but denies that it "does business" in the state of Oregon. Based on information and belief, GMACM and MERS admit that plaintiffs are residents of Oregon.

3.

Based on information and belief, GMACM and MERS admit the allegations in paragraph 4 of plaintiffs' Complaint.

4.

GMACM and MERS admit that GMACM is a Delaware Company with a registered agent in Oregon, that is the servicer of plaintiffs' loan and that it is the beneficiary of the deed of trust at issue in plaintiffs' Complaint. GMACM and MERS deny the remaining allegations in paragraph 5 of plaintiffs' Complaint.

5.

GMACM and MERS admit that MERS is a Delaware Company without a registered agent in Oregon. GMACM and MERS deny the remaining allegations in paragraph 6 of plaintiffs' Complaint.

6.

GMACM and MERS admit that NWTs was appointed as the Successor Trustee of plaintiffs' deed of trust. GMACM and MERS are without sufficient information to admit or deny the remaining allegations in paragraph 7 of plaintiffs' Complaint and, therefore, deny the same.

7.

GMACM and MERS admit the allegations in paragraph 8 of plaintiffs' Complaint except for plaintiffs' allegation that the deed of trust "purportedly established MERS as the DOT beneficiary, grantee, and nominee of the lender." MERS role is specifically defined by the language of the deed of trust, which speaks for itself.

8.

GMACM and MERS admit that in early 2010 plaintiffs were not making mortgage payments as required by the terms of their loan and that they contacted GMACM

regarding a loan modification. GMACM and MERS deny the remaining allegations in paragraph 9 of plaintiffs' Complaint.

9.

GMACM and MERS admit that some payments made by plaintiffs were rejected because plaintiffs were in default of their loan and the payments were not sufficient to cure plaintiffs' default, that GMACM requested plaintiffs cure their default and that plaintiffs were offered the opportunity to apply for a loan modification. GMACM and MERS deny the remaining allegations in paragraph 10 of plaintiffs' Complaint.

10.

GMACM and MERS admit the allegations in the first sentence of paragraph 11 of plaintiffs' Complaint. GMACM and MERS deny the remaining allegations in paragraph 11 of plaintiffs' Complaint.

11.

GMACM and MERS admit the allegations in paragraph 12 of plaintiffs' Complaint.

12.

GMACM and MERS admit the allegations in the first two sentences of paragraph 13 of plaintiffs' Complaint. The language of Exhibit E speaks for itself. GMACM and MERS deny the remaining allegations in paragraph 13 of plaintiffs' Complaint.

13.

GMACM and MERS deny the allegations in paragraphs 14 and 15 of plaintiffs' Complaint.

14.

In response to paragraph 16 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 13 of their Answer.

15.

GMACM and MERS admit that plaintiffs were arrears on their mortgage payments, but otherwise deny the allegations in paragraphs 17 through 19 of plaintiffs' Complaint.

16.

In response to paragraph 20 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 15 of their Answer.

17.

GMACM and MERS admit that GMACM was in a contractual relationship with plaintiffs and owed plaintiffs a duty of good faith and fair dealing regarding that relationship during the period of time the relationship existed. GMACM and MERS deny all remaining allegations in paragraphs 21 through 23 of plaintiffs' Complaint.

18.

In response to paragraph 24 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 17 of their Answer.

19.

GMACM and MERS deny the allegations in paragraphs 25 and 26 of plaintiffs' Complaint.

20.

In response to paragraph 27 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 19 of their Answer.

21.

Except admitting that GMACM and MERS are "persons" under ORS 28.130, GMACM and MERS deny the allegations in paragraphs 28 through 31 of plaintiffs' Complaint.

22.

In response to paragraph 32 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 21 of their Answer.

23.

GMACM and MERS deny the allegations in paragraphs 33 through 35 of plaintiffs' Complaint.

24.

In response to paragraph 36 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 23 of their Answer.

25.

GMACM and MERS deny the allegations in paragraphs 37 and 38 of plaintiffs' Complaint.

26.

In response to paragraph 39 of plaintiffs' Complaint, GMACM and MERS incorporate by reference and reallege paragraphs 1 through 25 of their Answer.

27.

GMACM and MERS deny the allegations in paragraphs 40 and 41 of plaintiffs' Complaint.

28.

Except as expressly admitted to herein, GMACM and MERS deny each and every allegation in plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

29.

One or more of plaintiffs' Claims for Relief fail to state a claim for relief against GMACM and/or MERS.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

30.

Some or all of plaintiffs' claims under 15 US §1692 et. seq. and/or ORS 646.639 may be barred by the one year statute of limitations applicable to claims brought under both statutes.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

31.

Some or all of plaintiffs' claims ORS 646.605 et. seq. may be barred by the one year statute of limitations applicable to claims brought under these statutes.

FOURTH AFFIRMATIVE DEFENSE

(Standing)

32.

Plaintiffs lack standing to challenge MERS authority to act as a beneficiary or to challenge any action taken by MERS regarding plaintiffs' deed of trust.

WHEREFORE, GMACM and MERS pray that plaintiffs take nothing, that plaintiffs' claims against them be dismissed with prejudice and that GMACM and MERS be awarded their costs, disbursements and attorney fees incurred in defending plaintiffs' claims.

Dated: December 28, 2011.

SUSSMAN SHANK LLP

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